IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3269 of 1998

Between:

T.M.J. Acharyulu son of Gopacharyulu
The Singareni Collieries Company Ltd., Ramagundam Division Area-I
Godavarikhani, Karimnagar Dist

..... PETITIONER

AND

1 General Manager
The Singareni Collieries Company Ltd Godavarikhani, Karimnagar Dist
2 The Director (Personnel)
The Singareni Collieries Company Ltd Kothagudem, Khamman Dist
3 The Techinial Director,
The Singareni Collieries Company Ltd Kothagudem, Khamman District 4
L.Mallaiah, son of
The Singareni Collieries Company Ltd Ramagundam Division Area-I ,
GodavariKhani, Karimnagar District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction , writ or order, one in the nature of Mandamus: a) declaring the action of the Respondent Nos. 1 to 3 while granting the promotion of the Respondent No. 4 in the category of Chargehand Grade-C With retrospective effect i.e., w.e.f. 1-3-89 even though he was promoted along with the Petitioner as Chargehad Grade-C post through proceedings dt. 29/11/93, w.e.f. 1-12-93 and not extending the same to petitioner and also not promoting the petitioner as Technical Grand-B (Chargehand Grand -B) on par with Respondent No. 4 even though the petitioner is fully qualified and senior to the Respondent No. 4 in the lower category is arbitrary, illegal and discriminative; b) granting all consequent benefits like

promotion in the post of Chargehand Grade-C w.e.f. 1-3-89 and next promotion as Technical Grade-B (Chargehand Grade-B) w.e.f. 1-3-89 with retrospective effect, seniority and arrears of pay etc. c) awarding costs

Counsel for the Petitioner:MR.K.M.MUKUNDA RAO.SUJATHA.V

Counsel for the Respondent Nos 1 to 3: Sri K.SRINIVASA MURTHY

Counsel for respondent No.4: None appeared.

The Court made the following :

O R D E R:

This writ petition is filed seeking a writ of Mandamus declaring the action of respondent Nos. 1 to 3 promoting respondent No.4 in the category of Charge Hand (Auto) Grade-C with retrospective effect i.e., from 01.03.1989, even though he was promoted along with the petitioner as Charge Hand Grade-C through proceedings, dated 29-11-1993 with effect from 01.12.1993 and not extending the same to the petitioner and promoting him to the further post as Charge Hand Grade-B as

arbitrary and illegal.

It is the case of the petitioner that he was appointed as Motor Mechanic Category-IV in the auto workshop of R-1 Company with effect from 17-02-1977. Lateron, he was promoted as Motor Mechanic Category-V. He was also further promoted as Motor Mechanic Category-VI along with R-4 through an order, dated 06-11-1983. The next promotion from the post of Motor Mechanic Grade-VI is Charge Hand Grade-C. The petitioner and respondent No.4 were promoted to the post of Charge Hand Grade-C with effect from 01.12.1993. However, respondent No.4 was promoted with retrospective effect i.e., notionally from 01.03.1989 Whereas the petitioner was given prospective promotion. On the basis of the retrospective promotion given to respondent No.4 with effect from 01.03.1989 in the category of Charge Hand Grade-C, respondent No.4 was also promoted to the further post of Technical Grade-B (Charge Hand Grade-B) with effect from 01.03.1994. Whereas the petitioner has been denied further promotion since his case for promotion with retrospective effect from 01.03.1989 was not considered on par with respondent No.4. Hence, this writ petition is filed to declare the same as arbitrary and illegal.

A detailed counter affidavit has been filed by the management asserting that the petitioner compared his case with respondent No.4, to whom, the management on its own had not given any seniority over and above the petitioner. Respondent No.4 approached the Industrial Tribunal by way of Industrial Disputes Act.No.38 of 1992, wherein the Industrial Tribunal was pleased to hold that respondent No.4 is entitled for promotion to the post of Charge Handworker (Mechanical) with effect from 1989 and on the basis of settlement reached under Section 18(1) of Industrial Disputes Act, dated 29.11.1994 respondent No.4 was promoted as Charge Hand (Auto) Grade-C with effect from 01.03.1989 and monetary benefits were paid to him with effect from 01.11.1994. The rights of respondent No.4 had flown from the award passed by the Labour Court. The petitioner never approached the Labour Court in

this regard. Even, otherwise, for the purpose of promotion to a particular cadre, there should be a vacancy to be filled in for the purpose of accommodating a person. During the year 1993, vacancies of Chargehand Grade-3 were identified and selection test was conducted for the same on 18.11.1993. As the petitioner has come out successful in the test, he was promoted as Chargehand Grade-C with effect from 01.12.1993. Respondent No.4 has also come out successful in the said selection and he was also promoted with effect from 01.12.1993. However, he was given the promotion with retrospective effect from 01.03.1989 on the basis of the award passed by the Industrial Tribunal after adjudication of the matter. In fact, the petitioner and others have also raised some Industrial Disputes and the same was referred to the Conciliation Officer. After elaborate discussions, it was declared that the matter ended in failure and the Government of India was not inclined to refer the matter for adjudication for the reason that the workmen have been promoted in terms of the settlement, dated 28.11.1993 and the Union has failed to prove any contravention of the terms of the settlement. Therefore, there is no justification in the claim of the petitioner. The writ petition is devoid of merits and it has to be rejected.

I have given my earnest consideration to the respective submissions of the learned counsel and gone through the material on record.

The petitioner's claim is only speculative in nature. Since the case of respondent No.4 was considered and promoted to the post of Chargehand Grade-C on one and the same date, that does not mean that retrospective promotion given to respondent No.4 on the basis of an award passed by the Industrial Tribunal in I.D.No.38 of 1992, in his favour with retrospective effect from 01.03.1989 cannot be said to be bad or illegal. The petitioner's case was considered on merits and he was promoted. He never approached the Industrial Tribunal or other forum to work out the remedies available. On the other hand, the conciliation proceedings raised by the Tribunal ended in failure in view of the settlement, dated 28.11.1992 entered

under Section 12(3) of the Industrial Disputes Act on 29.11.1993 before the Assistant Labour Commissioner (Central) Government of India, Manchirial, Adilabad, wherein it was agreed to promote the petitioner who has been working as Motor Mechanic Category-VI, Auto Work Shop, R.G. to the post of Chargehand Grade-C with effect from 01.12.1993. Therefore, the contention of the petitioner that the benefit of promotion, which accrued to respondent No.4 in the post of Chargehand Grade-C with effect from 01.03.1989, cannot be extended to the petitioner. The writ petition is devoid of merits and it is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

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C.V.RAMULU.J.,

08.06.2005

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To

1. The General Manager, Singareni Colleries Company Ltd, Ramagundam Area-1, Godavarikhani, Karimnagar District.

2. The Director(Personnel), Singareni Colleries Company Ltd., Kothagudem, Khammam District.

3. The Technical Director, Singareni Colleries Company Ltd., Kothagudem, Khammam District.

4. 2 C.D.Copies.